



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL SUIT NO. 12 OF 2017**

**PHILIP MULOCHI LUTEYA.....PLAINTIFF**

**VERSUS**

**AAR INSURANCE KENYA LIMITED.....DEFENDANT**

**RULING**

1. The application that I am tasked with determining is dated 10<sup>th</sup> July 2018. In it the plaintiff seeks to be allowed to reopen his case, to call witnesses and to produce documents. His case is that at the oral hearing of the matter he acted in person. He had documents to produce in support of his case, but he did not produce them as he did not know when he to produce them.

2. The defendant opposes the application. He has filed grounds of opposition. He avers that the application is intended to delay finalization of the matter, it does not raise triable issues, it is not supported by evidence, it does not meet the requirements upon which it is brought and it is an afterthought.

3. Directions were given on 23<sup>rd</sup> October 2018 that the same be disposed of by way of written submissions. There has been compliance for both sides have filed detailed written submissions complete with authorities. I have perused through them and noted the arguments advanced.

4. I have perused the record herein. I have noted that the matter proceeded on 25<sup>th</sup> June 2018. The plaintiff was unrepresented, he gave evidence in chief and did not refer to any documents at that stage. He sought to produce the same after he had been cross-examined. The defendant was represented by counsel.

5. I note from the pleadings that the case by the plaintiff was dependent on documentary evidence. The plaintiff is not an advocate by profession. I presume that he is unschooled on manner of presentation of cases in court, and especially on production of documents.

6. I believe justice would be served if the case is reopened so that he can lay before the court the documents that he relies on to support his case. In matters of this nature courts ought to ensure that there is equality of arms.

7. It has not been demonstrated that the defendant would suffer any prejudice. In any event, the defendant can be compensated in costs for any inconvenience that they no doubt have to suffer.

8. I shall dispose of the application dated 10<sup>th</sup> July 2018 in the following terms –

**(a) That the matter shall be re-opened for re-hearing but the re-hearing shall be limited to production of the documents that the plaintiff intended to rely on;**

**(b) That the plaintiff shall be subjected to cross-examination, limited to the documents that he shall have produced;**

**(c) That the plaintiff shall pay to the defendant throwaway costs of Kshs. 10, 000.00 within fourteen (14) days, in default of which the orders made herein shall abate; and**

**(d) That dates for the re-hearing shall be given by the court at the delivery of this ruling.**

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 29<sup>th</sup> DAY OF April, 2019**

**W MUSYOKA**

**JUDGE**